

ROBERT BOUCHER
Claimant

PEERLESS PRODUCTS, INC.
Respondent

HOME INDEMNITY COMPANY
Insurance Carrier

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ORDER

FINDINGS OF FACT AND CONCLUSIONS OF LAW

When the Appeals Board heard oral argument in this proceeding on March 21, 1995, the parties did not mention the Kansas Trial Lawyers Association intended to request leave to file a brief as amicus curiae. The Workers Compensation Act does not provide for amicus curiae and even if it did, the Appeals Board finds that it would not be necessary or helpful to have an amicus curiae in this instance. Further, because the Appeals Board decides issues of fact, as well as issues of law, it would be more appropriate to request to file an amicus brief when a case is appealed to the appellate courts whose issues are confined to those of law.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the request of the Kansas Trial Lawyers Association for leave to file brief in this proceeding as amicus curiae should be, and hereby is, denied.

IT IS SO ORDERED.

Dated this ____ day of April, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Kathryn P. Barnett, Kansas City, KS
Timothy A. Short, Pittsburg, KS
John David Jurcyk, Lenexa, KS
Robert H. Foerschler, Administrative Law Judge
George Gomez, Director

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROBERT BOUCHER
Claimant

VS.

PEERLESS PRODUCTS, INC.
Respondent

AND

HOME INDEMNITY COMPANY
Insurance Carrier

Docket No. 184,576

ORDER

The claimant requests review of the Award of Administrative Law Judge Robert H. Foerschler entered in this proceeding on February 9, 1995. The Appeals Board heard oral argument on March 21, 1995.

APPEARANCES

Claimant appeared by his attorney, Kathryn P. Barnett of Kansas City, Kansas. The respondent and its insurance carrier appeared by their attorney, John David Jurcyk of Lenexa, Kansas. There were no other appearances.

RECORD

The record considered by the Appeals Board is enumerated in the Award of the Administrative Law Judge.

STIPULATIONS

The stipulations of the parties are listed in the Award of the Administrative Law Judge and are adopted by the Appeals Board for this review.

ISSUES

The Administrative Law Judge awarded claimant medical benefits, but denied him permanent partial disability benefits for permanent injury and impairment received as a result of a compensable, work-related accident that occurred on November 18, 1993. The first issue on review is whether K.S.A. 44-501(c) precludes claimant from recovering permanent partial disability benefits because he did not miss any time from work after his accident. The second issue on review is whether the Administrative Law Judge erred in awarding claimant future medical care and treatment without proof same is needed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The decision of the Administrative Law Judge denying claimant permanent partial disability benefits must be reversed.

(1) The facts are not in dispute. Claimant was involved in a car accident on November 18, 1993, that arose out of and in the course of his employment. As a result of the accident, claimant suffered neck and upper back pain. Despite his symptoms and wearing a neck brace, claimant continued to perform his duties as plant manager. The parties stipulate that claimant has sustained a nine and two-tenths percent (9.2%) whole body impairment as a result of the accident. Claimant contends he is entitled to permanent partial disability benefits for this permanent impairment. On the other hand, the respondent and its insurance carrier contend that because claimant did not miss any time from work, he is entitled to medical benefits only.

K.S.A. 44-501(c) provides in part:

"Except for liability for medical compensation, as provided for in K.S.A. 44-510 and amendments thereto, the employer shall not be liable under the

workers compensation act in respect of any injury which does not disable the employee for a period of at least one week from earning full wages at the work at which the employee is employed."

The Kansas Supreme Court addressed this issue in 1918 in the case of Raffaghelle v. Russell, 103 Kan. 849, 176 Pac. 640. The decision centered upon the interpretation of section 5896 of the General Statutes of 1915, which provided:

"That (a) the employer shall not be liable under this act in respect of any injury which does not disable the workman for a period of at least two weeks from earning full wages at the work at which he is employed."

When called upon to interpret this language, the Court held:

"The statute quoted does not mean that unless a workman's injuries totally disable him from laboring for the first two weeks succeeding his mishap he cannot recover. It means that unless the injury is sufficiently serious to disable him for two weeks, the injury is considered by the statute to be too trivial for its concern."

The language in K.S.A. 44-501(c) is strikingly similar to that interpreted in Raffaghelle, *supra*. Contrary to the argument of respondent, our reading of Raffaghelle does not indicate that the Court relied upon the principle of liberal construction to thus construe the act.

Although the respondent is correct the Legislature amended the Workers Compensation Act in 1987 to modify the rule of liberal construction, because of the similarity in the language in Raffaghelle, the Appeals Board does not believe the Kansas Supreme Court would interpret K.S.A. 44-501(c) differently. The Appeals Board also notes the Legislature has not significantly modified the language of the act now in issue despite the long line of Kansas decisions that have interpreted it and allowed compensation. The failure to significantly modify the statute is an indication the Legislature was satisfied the judicial interpretation was correct.

Rather than claimant's injury being too trivial or too inconsequential to bother the respondent and its insurance carrier, the Appeals Board finds the claimant has experienced a significant injury and impairment for which he is entitled to receive permanent partial disability benefits based upon the stipulated impairment of function rating of nine and two-tenths percent (9.2%).

(2) The respondent and insurance carrier argued the Administrative Law Judge granted claimant an open-ended award of future medical compensation. However, that is not the case. A quick review of the award section of the Administrative Law Judge's decision, page 5, indicates claimant would be entitled to future medical treatment upon proper application and hearing. The Appeals Board finds the Administrative Law Judge was correct by awarding future medical care and treatment upon proper application, notice, and hearing. Such order should not be disturbed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Robert H. Foerschler dated February 9, 1995, should be, and hereby is, modified as follows:

AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Robert Boucher, and against the respondent, Peerless Products, Inc., and its insurance carrier, Home Indemnity Company, for an accidental injury which occurred on November 18, 1993, and based upon an average weekly wage of \$1,346.15, for 415 weeks of permanent partial disability benefits at the rate of \$82.57 per week or \$34,266.55 for a 9.2% permanent partial general disability making a total award of \$34,266.55.

As of April 26, 1995 there is due and owing claimant 75 weeks of permanent partial disability compensation at the rate of \$82.57 per week or \$6,192.75, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of \$28,073.80 is to be paid for 340 weeks at the rate of \$82.57 per week for a 9.2% permanent partial general disability until fully paid or further order of the director.

Claimant is entitled to future medical care and treatment only upon proper application, notice, and hearing before the director.

The Orders of the Administrative Law Judge that are not inconsistent with the above are hereby adopted by the Appeals Board as its own.

IT IS SO ORDERED.

Dated this ____ day of April, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Kathryn P. Barnett, Kansas City, KS
John David Jurcyk, Lenexa, KS
Robert H. Foerschler, Administrative Law Judge
George Gomez, Director